[DK] The Case Regarding the Danish Muhammad Drawings

IRIS 2006-8:1/35

Søren Sandfeld Jakobsen
Aalborg University

On 15 March 2006, the Director of Public Prosecutions (“the Director”) in Denmark decided there was no basis for instituting criminal proceedings against the newspaper Jyllands Posten for publishing the article “The Face of Muhammad”, which included 12 drawings of the Prophet Muhammad. In doing so, the Director upheld the decision made by the Regional Public Prosecutor on 6 January 2006.

The article in Jyllands-Posten was published on 30 September 2005 and was advertised on the front page of the newspaper with a short introduction and one of the twelve drawings. The article was entitled "The Face of Muhammad" and laid out as a three-column text surrounded by twelve drawings. The introduction to the article, which was headed "Freedom of expression", explained that many in Denmark and other Western European countries were afraid of criticizing Islam, which according to the newspaper gave cause for concern because it could lead to self-censorship. Further, the article stated that " some Muslims reject modern, secular society. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with secular democracy and freedom of expression, where one has to be ready to put up with scorn, mockery and ridicule. It is therefore no coincidence that people living in totalitarian societies are sent off to jail for telling jokes or for critical depictions of dictators. As a rule, this is done with reference to the fact that it offends people’s feelings. In Denmark, we have not yet reached this stage, but the cited examples show that we are on a slippery slope to a place where no one can predict what self-censorship will lead to *”.*

The text was followed by twelve drawings made by members of the Danish Newspaper Illustrators' Union who had been invited by the newspaper to “draw Muhammad as they see him." The twelve drawings illustrated, inter alia:

- The face of a man whose beard and turban were drawn within a crescent moon, and with a star (symbols normally used for Islam);

- The face of a grim-looking bearded man with a turban shaped like an ignited bomb;

- Five stylised female figures wearing headscarves, with facial features depicted as a star and a crescent moon. The caption reads: "Prophet! You crazy bloke!

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Keeping women under the yoke!";

- Two bearded men wearing turbans and armed with a sword, a bomb and a gun, running towards a third bearded wearing a turban. He is reading a sheet of paper and gesturing them to hold off, with the words: "Relax folks! It’s just a sketch made by an unbeliever from southern Denmark";

- A bearded man wearing a turban and carrying a sword, standing with a black bar covering his eyes. Two women are flanking him, wearing black gowns, with only their eyes visible;

- A bearded man wearing a turban, standing on clouds with arms outstretched, exclaiming: "Stop, stop, we ran out of virgins!". Men in tatters with plumes of smoke over their heads queue up in front of him.

The legal questions in the case were whether the article could be considered a criminal offence under the provisions of section 140 and/or 266 b of the Danish Criminal Code. Section 140 of the Danish Criminal Code provides that any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months. Under section 266 b(1) of the Danish Criminal Code any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

Both Section 140 and 266 b contain a restriction on the right to freedom of expression and must therefore be subject to a narrow interpretation. The right to freedom of expression is laid down in Article 77 of the Danish Constitution and Article 10 of the European Convention on Human Rights. The right to freedom of expression also comprises expressions that may shock, offend or disturb. It may be subject to restrictions and penalties as prescribed by law and which are necessary in a democratic society i.e. are proportionate to the legitimate aim pursued.

Having examined the practice of the European Court of Human Rights, the Director noted that the Court attaches decisive importance to the regard for freedom of expression when assessing the justification of interference with expressions that may offend religious feelings. However, at the same time, the Court has stated that there is a duty, to the extent possible, to avoid expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs. The Director concluded that it was not possible to infer a legal stance from the case law of the Court as to how it would

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weigh the regard for freedom of expression in relation to expressions that can offend religious beliefs.

Regarding Section 140 of the Danish Criminal Code (cited above), the Director first noted that the provision must be interpreted in light of what is generally considered accepted usage or other form of expression in Danish society, and that a direct and informal form of debate is not unusual in Denmark, where even offensive and insulting expressions of opinion are widely accepted. Furthermore, the intention behind the provision was only to afford protection from the most serious offences to religious beliefs. As a result, the provision is very rarely used.

The Director then assessed whether the conditions in Section 140 were fulfilled. Based on an analysis of the legislative material in preparation of the Criminal Code, he found that this was not the case because the newspaper article did not contain “ mockery or scorn of religious doctrines or acts of worship " within the meaning of Section 140. He noted in this respect that the religious writings of Islam cannot be said to contain a general and absolute prohibition against drawing the Prophet Muhammad. There is a prohibition against depicting human figures, which also includes depicting the Prophet Muhammad, but not all Muslims comply consistently with the ban on depiction, as there are pictures of Muhammad dating from earlier times as well as the present. Thus, the Director concluded that it cannot be assumed that a drawing of the Prophet Muhammad in general would be contrary to the religious doctrines and acts of worship of the religion as practised today and thus constitute a violation of section 140 of the Danish Criminal Code.

The fact that the drawings in the case were not merely a depiction of the Prophet but a caricatureof him could in theory lead to another result because a caricature of such a central figure in Islam as the Prophet Muhammad may imply ridicule or be considered an expression of contempt of Islamic religious doctrines and acts of worship. However, based on a review of the article and each of the drawings, and taking into account that, according to the legislative material and precedents, Section 140 of the Danish Criminal Code is to be interpreted narrowly, the Director concluded that even viewed as a caricature the article and the drawings did not fulfil the conditions in Section 140.

The Director of Public Prosecutions then assessed the case in relation to Section 266 b (cited above). He found that the drawings constituted a "statement or other information" and that it was made "publicly". The question then was whether the article and the drawings "insult" or "degrade" Muslims on account of their religion. The Director found that this was not the case, mainly because the article did not refer to Muslims in general, but expressly mentioned "some" Muslims, i.e. Muslims who reject the modern, secular society and demand a special position in relation to their own religious feelings. The latter group of people must be considered to

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be referred to in the expression "a group of people" as mentioned in section 266 b, but the article could not be considered scornful or degrading towards this group - even if seen in the context of, and together with, the drawings. Likewise, the Director found that none of the drawings could be considered to be meant to refer to Muslims in general. Furthermore, the depiction of Muslims in the drawings was not scornful or degrading. Accordingly, the Director did not find that section 266 b was violated.

The Director of Public Prosecutions did not find any basis on which to change the decision made by the Regional Public Prosecutor and therefore concurred in the decision to discontinue the investigation with regard to sections 140 and 266 b of the Danish Criminal Code. The Muhammad article and drawings were, in other words, within the limits of the constitutional freedom of expression. However, in a concluding remark the Director dissociated himself from the following statement in the introduction to the article: “ it is incompatible with the right to freedom of expression to demand special consideration for religious feelings [...] one has to be ready to put up with scorn, mockery and ridicule ” . The Director emphasized that although there was no basis for instituting criminal proceedings in the case, it should be noted that both provisions of the Danish Criminal Code - and also other penal provisions, e.g. concerning defamation of character - contain a restriction of the right to freedom of expression. To the extent publicly made expressions fall within the scope of these rules there is, therefore, no unrestricted right to express opinions about religious subjects.

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Decision from the Director of Public Prosecution

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